

**Environmental Quality Council
Work Plan
1999-2000**

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Information about the 1999-2000 Draft Work Plan

Introduction

This is the final work plan for the Environmental Quality Council (EQC or Council) for the 1999-2000 interim. In this document you will find:

- An explanation of how the EQC plans its work.
- A description of adopted work plan topics, the Council's action on the topic and a resource allocation for each topic.
- A draft timeline.

A separate document, the *Draft Work Plan Appendices*, contains copies of bills, study resolutions and other information relevant to the work plan.

How the EQC Plans its Work

During the legislative interim, the EQC typically focuses on two to four major study topics, while also maintaining general oversight of state environmental programs. Senate Bill 11 (1999) added rulemaking oversight to the EQC's responsibilities.

The Council selects study topics at the beginning of the interim. **The primary constraint limiting the EQC study agenda for the interim is the number of issues that can be effectively addressed within the available time and resources of Council members and staff.**

This 1999-2000 Work Plan is really a **decisionmaking tool** to help Council members work together efficiently to set priorities and decide how and where to spend the EQC's time and resources. Staff will subsequently develop detailed draft work plans and timetables for each major study. A timeline illustrating the overall schedule that these work plans will fit into once the meeting schedule and work plan are finalized is presented at the end of this document.

The EQC adopted the following 1999-2000 work plan elements at its May 24 and 25, 1999 meeting:

Montana Environmental Policy Act (MEPA) Study

Source/authority: SJR 18 (1999)

Background: The 1999 Legislature debated the need for significant policy changes to MEPA. In the end, the Legislature concluded that the magnitude and complexity of MEPA implementation and policy issues deserved careful and deliberative study. As a result, the

Legislature enacted SJR 18 requesting the EQC to give priority to the study of MEPA with the goals of:

1. **evaluating and improving** the MEPA process;
2. ensuring that the MEPA process results in state agencies making **timely, efficient, informed, cost-effective, legally defensible, and ultimately better decisions**; and
3. ensuring that the MEPA process results in **government accountability** and that **Montanans are informed of and participate** in state agency decisions.

The resolution requests that the study include the following elements:

- Is the implementation of **MEPA achieving its intended purpose** in fulfilling the policy set forth in statute?
- **The study should consider a broad range of MEPA issues** including but not limited to: existing implementation; issues raised and debated in House Bill 142 and Senate Bill 413; identifiable costs and benefits of MEPA implementation; suggestions for improving MEPA; effective citizen participation; and an analysis of successful and efficient implementation of other similar national and state laws.
- **That the EQC actively solicit public and agency participation** in the study process.

At the end of the legislative session, legislators were polled to determine which studies should receive a higher priority during the interim. This study was ranked 6th out of 24 studies in the legislator poll.

The EQC is requested to prepare a report of its findings and conclusions and identify options and make recommendations, including legislation, if appropriate, to the Governor and the 57th legislature prior to September 30, 2000.

Council action: The EQC appointed a seven person subcommittee to address this topic. See the MEPA work plan for more information.

Resources: 1.00 FTE

Oversight

Source/authority: SB 11 (1999); 75-1-324, MCA.

Background: Under MEPA, the EQC has broad statutory oversight authority and has historically used that authority to review agency activities on an issue by issue basis as the need arises. Senate Bill 11 (SB 11) further expands and defines the EQC's oversight authority to include administrative rule review, program evaluation, and monitoring the functions of the Department of Environmental Quality, Department of Natural Resources and Conservation, and the Department of Fish, Wildlife, and Parks. SB 11 requires a more systematic approach to agency oversight, especially in terms of administrative rule review. EQC legal staff will monitor the rule adoption process and the Council will receive periodic updates on the administrative

rule adoption process for each agency. The Council has the authority to request records; make recommendations for adoption, amendment, or rejection of a rule; institute, intervene in, or otherwise participate in rulemaking proceedings; review the conduct of administrative proceedings; request a legislative poll; request an economic impact statement on a rule; or object to violation of authority for a rule.

Traditionally, the EQC has one or more agency oversight issues on the agenda for each meeting. The Council has also historically allocated the necessary resources to respond to issues as they arise. There are also a number of statutorily required agency reports that are scheduled for presentations before the Council. One of the more significant is the compliance and enforcement of environmental and natural resource laws report required pursuant to 75-1-314, MCA.

Council action: The EQC opted to conduct a limited form of systematic oversight of agency programs and administrative rules. The Council requested that staff develop an agenda item at each meeting to address the oversight issues.

Resources: .20 FTE

Environmental Conditions/Trends (Indicators)

Source/authority: 75-1-324, MCA.

Background: From 1972 to 1975, the EQC prepared comprehensive annual reports on the status of Montana's natural and human environment. In subsequent years, the EQC reported on specific aspects of the environment and reports became less all encompassing and more topical depending on the priority issues of the time. In 1996, the EQC produced and distributed *Our Montana Environment...Where Do We Stand?* That report was an effort at gathering comprehensive information on specific environmental indicators and identifying trends that had occurred since the 1975 report. In December 1996, the EQC recommended that the 1996 indicators report be revised and updated every 4 or 5 years.

Council action: The 1996 report should be installed on the EQC web site and updated as time and new information allow. Council efforts at tracking environmental trends should be combined with council oversight and policy efforts involving the riparian management and growth/ land use topics. See the Land Use/Environmental Trends Subcommittee work plan for more detailed information.

Resources: .10-.35 FTE

Water Policy

Source/authority: 85-2-105, MCA.
Recommendations of 1997-98 EQC.
SJR 3 (1999).

Background: The water policy duties of the EQC that are set forth in 85-2-105, MCA are paraphrased below.

1. Advise the Legislature on the **adequacy of Montana's water policy**.
2. Advise the Legislature on **important state, regional, national, and international developments** that affect Montana's water resources.
3. Oversee **policies and activities of executive branch agencies** and other state institutions that affect Montana's water resources.
4. Assist with **interagency coordination** related to Montana's water resources.
5. **Communication with the public** about water policy and water resources.
6. Analyze and comment on the **State Water Plan**, when prepared by the Department of Natural Resources and Conservation.
7. Analyze and comment on the **Renewable Resource Grant and Loan Program** report.
8. Analyze and comment on **water related research** undertaken by state entities.
9. Analyze, verify and comment on the information in the **Water Information System of NRIS**.
10. Report to the Legislature.

Council action: The EQC appointed a three-member subcommittee to address this topic. See the Water Policy Subcommittee work plan for more information.

Resources: .50 FTE

Riparian Management

Source/authority: HB 458 (1999)

Background: The 1999 Montana Legislature passed HB 458. Specifically, the bill requires the EQC to:

1. **Review and summarize** state, federal, and local **policies and programs** related to riparian management in Montana.
2. **Identify overlapping or conflicting** goals or implementation programs.
3. **Evaluate existing** riparian **best management practices** (BMPs).
4. **Evaluate programs** to disseminate information about voluntary BMPs.
5. **Develop cost-effective mechanisms to compile and disseminate information about BMPs** in coordination with others.

The EQC is to coordinate with other groups and interested stakeholders in this effort. These provisions sunset December 31, 2000.

Council action: The Council assigned this topic to the three-member Land Use/Environmental Trends Subcommittee. The subcommittee will focus its efforts on activities related to residential development in riparian (streamside) areas. See the Land Use/Environmental Trends Subcommittee work plan for more detailed information.

Resources: .20 FTE

Energy Policy Development

Source/authority: 90-4-112 and 90-4-1003, MCA.

Background: The Council is required, as the need arises, to maintain a continual process to develop the components of a comprehensive state energy policy. The Council is also required to review and evaluate Department of Environmental Quality (DEQ) research reports on renewable energy sources and development programs. The Council expended a significant amount of effort in the 1993-94 interim in developing a state-wide energy policy statement. The 1995 Legislature enacted the EQC's recommendations. During the 1995-96 interim the EQC assigned a broad-based working group of stakeholders to make recommendations on transportation energy policy and on alternative transportation fuels. Again, the 1997 Legislature adopted the EQC's recommendations. Since that time, there has been little activity in terms of energy policy development. The EQC monitored and received updates on electric industry restructuring during the 1997-98 interim. EQC staff also staffed the Transition Advisory Committee on Electric Industry Restructuring during the 1997-98 interim.

Council action: The EQC decided to receive updates on electric industry restructuring and other energy issues on an as needed basis and review and evaluate DEQ reports on renewable energy source research, if any.

Resources: .05 FTE

Land Use

Source/authority: Recommendations of 1997-98 EQC.
EQC statutory requirement related to policy development (75-1-324 (3), MCA).

Background: During the 1997-1998 interim, the EQC appointed a subcommittee to study issues related to planning for growth. This effort resulted in the EQC report *Planning for Growth in Montana* and four EQC bills that were introduced during the 1999 legislative session. Three of the four bills were approved by the Legislature and signed by the Governor. The bill that died would have allocated \$1 million each fiscal year from the bed tax for a grant program to pay for development and implementation of local growth policies.

Council action: The Council decided to monitor and provide assistance with implementation of EQC growth legislation enacted by the 1999 Legislature (Senate Bills 95, 96, and 97). See the Land Use/Environmental Trends Subcommittee Work Plan for more detailed information.

Resources: .20 FTE

Voluntary Cleanup Incentives

Source/authority: HJR 3
1997-98 EQC Water Policy Subcommittee

Background: During the 1997-1998 interim, the EQC Water Policy Subcommittee provided oversight and comment on the Department of Natural Resources and Conservation state water plan as required by 85-2-105(3), MCA. The DNRC plan and the EQC Water Policy report both recommended that the EQC conduct a study of contaminated properties that resulted in the passage of HJR 3.

The 1999 Legislature, through HJR 3, asked the EQC to coordinate with the Departments of Environmental Quality, Commerce, and Revenue to determine if tax or other economic incentives are needed to encourage the voluntary cleanup and redevelopment of contaminated properties (brownfields) in Montana.

The HJR 3 study was ranked 21st out of 24 studies in the legislator poll. The Legislative Council did not assign this study to an interim committee and recommended that it not be undertaken this interim.

Council action: The EQC decided to take no specific action on this topic for now, but requested staff to track this issue by attending meetings and update the Council as necessary.

Resources: minimal

Eminent Domain

Source/authority: HJR 34 (1999).

Background: Five bills amending the eminent domain statutes were introduced during the 1999 legislative session; all of the bills were tabled. Interest in the eminent domain laws is at least partly related to the following projects and issues: a Yellowstone Pipeline Company proposal to construct a pipeline between Missoula and Plains; the proposed Tongue River Railroad; relocation of a Cenex pipeline between Billings and Hysham; and concerns about multiple uses of condemned property (e.g., for fiber optic cables in addition to other uses) and fair compensation for any new uses. HJR 34, a resolution requesting an interim study of use of the power of eminent domain and the existing statutes related to eminent domain was approved by the 1999 Legislature. HJR 34 was ranked 2nd (tied with 3 others) out of 24 studies in the legislator poll.

The resolution requests that the study cover the following:

- **Implementation of existing eminent domain laws** including: frequency and distribution of condemnation actions in Montana; the types of interest in real property condemned in Montana; the extent to which rights-of-way obtained through the use of eminent domain are being resold or re-leased for new uses and the degree to which the original landowner is compensated for those new uses.

- **Adequacy of current laws** with respect to: due process; just compensation; burden of proof standards; the abandonment process; rights of reentry; reversions; methods for acquiring property or the use of property, including types of easements and restrictions on easements; and multiple use of easements.
- **Need for and benefit** of revising the laws related to eminent domain.

The resolution encourages the interim committee assigned to conduct this study to invite participation by and involvement of interested and knowledgeable persons including property owners, industry representatives, representatives of environmental organizations, and representatives of state and local government entities. The committee is further encouraged to actively seek participation by citizens from all parts of Montana. The committee must report to the 57th Legislature.

The Legislative Council assigned this study topic to the EQC with the understanding that the study would be conducted cooperatively with the Law, Justice, and Indian Affairs Committee. The Legislative Council also agreed to allocate additional Legislative Services Division staff resources to assist with this study. At this time, the additional FTE staff that may be allocated is unknown. However, a portion of the FTE staff required to conduct this study will come from outside of the EQC staff; this should be taken into consideration in the allocation of resources.

Council action: The EQC decided to assign an EQC Subcommittee that will work jointly with any members assigned from the Law, Justice, and Indian Affairs Committee. The Subcommittee will hold public hearings to target issues, review and evaluate some issues, and report to the Legislature.

Resources: .75 to 1.00 FTE

Draft 1999-2000 Work Plan Timeline

[Note: This draft timeline is provided to give you an idea of the general timeline that each study will need to fit into in order to complete the work on time. The timeline shows the last date for completion of certain items. Please refer to the work plan for each study for specific timelines.]

September 22-23, 1999	Adoption of detailed work plans for each subcommittee and study.
May 5, 2000	Last date to decide on contents of <i>draft</i> document if public comment desired. [May be earlier for some studies.]
May 6, 2000-June 16, 2000	Last dates to revise and distribute reports for public review and comment, if desired.
July 14, 2000	Last date to compile and distribute comments to EQC members.
July 28, 2000	Decision on recommendations, any proposed legislation, report contents.
September 16-17, 2000	Final approval of recommendations, proposed legislation. Selection of bill sponsors. Development of strategy.